STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Brighton Hotel Suites, Inc.,
Petitioner,

v MTT Docket No. 436591

City of Brighton,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Brighton Hotel Suites, Inc., appeals ad valorem property tax assessments levied by Respondent, City of Brighton, against Parcel No. 4718-30-100-079 for the 2012 and 2013 tax years. John A. Ponitz, Attorney, represented Petitioner, and Bradford L. Maynes, Attorney, represented Respondent.

A hearing on this matter was held on March 4 and 5, 2014. Petitioner's sole witness was Jumana Judeh, MAI, Michigan Certified General Real Estate Appraiser. Respondent's sole witness was Timothy J. Laurencelle, MAI, Michigan Certified Real Estate Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2012 and 2013 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
4718-30-100-079	2012	$6,371,700	$3,185,850	$2,550,092
4718-30-100-079	2013	$6,701,500	$3,350,750	$2,611,290

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the true cash value of the subject property on the assessment rolls is overstated and should be substantially reduced. Specifically, Petitioner contends that: (i) the subject property is 11.43 acres, with 5.83 acres buildable, and with both parties in agreement that the surplus land and wetlands add virtually no value, (ii) the cost approach is not a factor in the valuation process for this property, but the income and sales approach should be considered, (iii) the subject is a

stabilized property, having been in operation for six to seven years, (iv) the most appropriate method to use in valuing the subject property is the income approach, based on the actual income and expenses of the subject, (v) the approach used by Respondent's expert in projecting future income and expenses is more subjective, with a tendency to automatically overstate the income and possibly misstate expenses, (vi) the true cash value of the subject property, based on revisions to Petitioner's appraisal testified to at the hearing by Petitioner's appraiser, is in the range of $4.64 to $4.898 million.

As determined by Petitioner's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue, as revised by Petitioner's appraiser during testimony, should be as follows:

Parcel Number: 4718-30-100-079

Year	TCV	SEV	TV
2012	$4,640,000	$2,320,000	$2,320,000
2013	$4,640,000	$2,320,000	$2,320,000

PETITIONER'S ADMITTED EXHIBITS

P-1 CV of Jumana Judeh, MAI

P-2 2011 and 2012 Financial Reports

P-3 STR Reports

P-4 Appraisal prepared by Jumana Judeh, dated September 27, 2013

PETITIONER'S WITNESS

Jumana Judeh

Jumana Judeh, MAI, Michigan Certified Real Estate Appraiser, was admitted as Petitioner's valuation expert in this matter. Ms. Judeh testified that: (i) the building on the subject is a hotel that was built in 2005, has 94 rooms, is well-maintained, and is in average condition with sufficient parking, (ii) the subject is a limited-service hotel, meaning that there is no restaurant, room service, or banquet facilities, and it is her understanding that the majority of the rooms have a kitchenette, (iii) approximately 5.6 acres of the subject is wetlands, with a retaining wall and bridge that have to be maintained, (iv) any affect the wetlands have on the value of the subject would be extremely limited because it cannot be used, (v) the highest and

best use of the subject property, if vacant, is as commercial and, as improved, would be for continuation of the existing use, (vi) the cost approach was not considered, given the difficulty in measuring the accrued depreciation and the lack of new construction due to the recession, (vii) she prepared an income approach to value, which relied on income and expense information from the STR report, which indicated that the subject performs better than its direct competitors, (viii) the subject is a fully operational, stabilized property, with no indication of any management or structural issues, (ix) in determining the subject's income, she utilized the current average daily rate ("ADR") and occupancy rate for the subject even though it was higher than its competitors based on the STR report, (x) the only revenue included in the income approach was the room revenue; she concluded that telephone revenue and other income reflected on Petitioner's financial statements was not material, (xi) she included telephone expense in her financial analysis, (xii) because room tax was not included as income in her analysis, she should not have included $177,000 of room tax paid by Petitioner as an expense, (xiii) the expenses she included "are partly based on what the client provided . . . and partly based on [her] analysis of several other financials that [she has] reviewed over the years to try to stabilize the subject" over a two-year period as a percentage of total revenue, (xiv) although Petitioner's actual marketing expense for the 2012 tax year was $17,717, she included $43,938 for such expense because Petitioner has an interest in 100 hotels and is better able to leverage these ownership interests to achieve lower costs, (xv) her estimated insurance expense for the subject property was also higher than Petitioner's actual expense, given her assumption that Petitioner's sizable portfolio of similar properties would result in cost savings, (xvi) a market reserve rate of 4.5% was derived from RealtyRates, and was included as an expense to account for anticipated major expenses, which in this case, would include the roof, heating/cooling, and the bridge and retaining wall, (xvii) although she is not aware of the existence of any management agreement between Petitioner and a third party, she included a market based management fee typical for these property types, (xiii) she relied on national capitalization rates from RealtyRates and the band-of-investment method to develop a capitalization rate, with a reconciliation to RealtyRates because she felt a typical owner would be an institutional owner, (xix) the capitalization rate she used in her income approach encompasses all national hospitality limited-service hotels, rather than just investment grade hotels such as the subject, (xx) after developing a true cash value for the

subject property based on the income approach, she subtracted FF&E in the amount of $353,000 for each tax year to determine her final opinion of the value of the subject real property, (xxi) her determination of the value of the subject FF&E was based on the depreciated cost per room for office furniture, lobby furniture, the pool, and additional equipment, and on her knowledge of the industry and observations of the subject rooms, (xxii) she developed a sales comparison approach to test her determination of value using the income approach, but ultimately concluded that the income approach was "the best indicator of value" (Petitioner's appraisal, p. 64), and (xxiii) her final conclusion of the true cash value of the subject property for 2012 should be revised from $3.167 million to a range from $4.64 million to $4.9 million, after adjusting for personal property, based on corrections to income and expense items in the income approach, and (xxiv) her final conclusion of the true cash value of the subject property for 2013 should be similarly increased from her initial value determination of $3.627 million. [Transcript Vol I at 17 – 188.]

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values initially determined by Respondent for the 2012 and 2013 tax years at issue should be reduced, based on the submitted appraisal. Specifically, Respondent contends that: (i) the subject property operates in a niche market of extended stay, suite-type hotels, with no true competitors in the Brighton area, (ii) the Brighton market has remained strong throughout the economic recession, (iii) the subject is an income producing property and the most relevant approach to determine its true cash value is the income approach, (iv) although both appraisers generally agree with respect to revenues associated with the subject property, they disagree regarding expenses and an appropriate capitalization rate, (v) a correct capitalization rate should rely on actual data from the Michigan market, (vi) the expenses utilized by Petitioner's appraiser were inflated and understate net income generated by the subject property, (vii) Petitioner's appraiser admitted to numerous errors in her application of the income approach which, when corrected, increased her determination of the true cash value of the subject property by more than $1.5 million, (viii) Petitioner's appraiser recognized that the subject was a lower risk property but made no adjustment to the capitalization rate derived from RealtyRates, (ix) the estimated income used by

Respondent's appraiser as of December 31, 2011, is significantly lower than the subject's actual performance in 2012, and (x) the true cash value of the subject property determined by Respondent's appraiser is approximately $76,000 per room, which is supported by Respondent's appraiser's market analysis.

As determined by Respondent's expert, the TCV, SEV, and TV for the subject property for the tax years at issue should be as follows:

Parcel Number: 4718-30-100-079

Year	TCV	SEV	TV
2012	$7,150,000	$3,575,000	$2,550,092
2013	$7,300,000	$3,650,000	$2,611,290

RESPONDENT'S ADMITTED EXHIBITS

R-1 GIS Aerial Map of Subject Property and I-96 Corridor

R-2 Photographs of Subject Property

R-3 Appraisal prepared by Timothy J. Laurencelle, dated September 30, 2013

R-5 2013 Property Record Card

R-6 Photographs of Petitioner's Comparables

RESPONDENT'S WITNESS

Timothy J. Laurencelle

Timothy J. Laurencelle, MAI, Michigan Certified Real Estate Appraiser was admitted as Respondent's appraisal expert. He testified that: (i) the subject is an extended-stay suite hotel, which is likely to command a different clientele and price level than non-suite hotels, (ii) both the city of Brighton and the southeast corner of Livingston County were stabilized markets as of the valuation dates, (iii) the subject is a good quality, well-maintained Hilton hotel and is only six to seven years old, (iv) the surplus land and wetlands present have minimal contributing value and were not accounted for in his analysis, (v) the highest and best use of the subject property, if vacant, would be to hold for inventory and, as improved, would be continued use as an extended-stay suite hotel, (vi) the cost approach was not developed because estimating accrued depreciation can be difficult and speculative, and because this approach is less market oriented for an improved property, (vii) the sales comparison approach in this market tends to be

used by investors only as a benchmark number and nobody will purchase a hotel based strictly on the sales comparison approach, (viii) he reviewed sales of extended-stay suite hotels to provide an overview of what these properties were selling for on a per price unit, (ix) the subject is a stabilized property, (x) he was provided with five years of income and expense statements to review in developing an income approach, (xi) he applied both a direct capitalization and discounted cash flow analysis, with the direct capitalization method determined to be the most appropriate, (xii) in applying the direct capitalization method, he relied on the subject's operations over the past five years, Panel, Keer, Foster ("PKF") national data on limited-service suite hotels, and Smith Travel Services ("STR") information on operations and occupancy rates for specific hotels within the general area, (xiii) based on the subject's operating history and the published data, he concluded that revenue was increasing over the last three years, (xiv) in addition to room revenue, he included revenue from telephones, cable TV, pay-per-view TV, games, and vending machines, (xv) sales tax was not included as income or as an expense, (xvi) the subject's actual expenses are consistent with the market, (xvii) his pro forma gave more weight to the actual stabilized income and expenses of the subject over a five-year period but also relied on the PKF market data, (xviii) because Petitioner's financial statements do not reflect the payment of a management fee, he did not include this expense in his pro forma despite the PKF data showing management fees at 3.5%, (xix) there was no suggested replacement reserve in PKF and he selected 1.25% because appraisal standards require an allocation for reserves, (xx) he developed a capitalization rate based on the band of investment method and market sales, (xxi) after determining a value for the business, he deducted an amount for FF&E and other business assets based on information provided by Petitioner. [Transcript Vol II at 205 – 346.]

FINDINGS OF FACT

1. The subject property, known as Homeward Suites Hotel, is located at 8060 Challis Road, Brighton, Michigan, Livingston County.
2. The subject property was assessed for the tax years at issue as follows:

Parcel Number: 4718-30-100-079

Year	TCV	SEV	TV
2012	$7,817,400	$3,908,700	$2,550,092

2013	$7,002,000	$3,501,000	$2,611,290

3. The subject property is zoned IA – Light Industrial District.
4. The subject property's highest and best use, as improved, is as an extended stay, suite hotel.
5. The subject property was completed and opened in 2006.
6. The subject property is a three-story, limited-service, extended stay, suite hotel, with 94 rooms, an office, two meeting rooms, exercise room, indoor pool, laundry room, and on-site parking.
7. The subject property is on 11.43 acres, with approximately 5.83 buildable acres and the remainder being wetlands.
8. Neither appraiser assigned a value to the excess land.
9. The subject property is located near the southwest corner of Challis Road and Library Drive and has limited road visibility and no freeway visibility.
10. Neither appraiser utilized the cost approach to value, concluding that accrued depreciation and obsolescence was too difficult to determine.
11. Although Petitioner's appraiser fully developed a sales comparison approach to value, Petitioner's appraiser's reconciliation of value relied on the income approach because the subject property is "an income producing investment property." (Petitioner's appraisal, p. 64)
12. Petitioner's appraiser prepared an income approach utilizing Petitioner's 2012 and 2013 income and expenses, information from the STR's report, and her personal knowledge and experience.
13. Although Petitioner's appraiser developed a capitalization rate based on the "band of investment theory," (Petitioner's appraisal, p. 54), Petitioner's appraiser ultimately determined a capitalization rate based on Realty Rates "given that they are based on a wider survey." (Petitioner's appraisal, p. 56)
14. Petitioner's appraiser determined the going concern value of the subject property to be $3.52 million for 2012 and $3.98 million for 2013 using the income approach to value.

15. Petitioner's appraiser determined the true cash value of the subject property to be $3.167 million for 2012 and $3.627 million for 2013, after reducing the going concern value by an estimated FF&E value of $353,400 for each year based on "inventory observed during inspection." (Petitioner's appraisal, p. 23)
16. Upon cross-examination by Respondent's counsel, Petitioner's appraiser admitted to numerous errors in her application of the income approach, which resulted in Petitioner's appraiser revising her determination of the going concern value of the subject property to $5,251,325 for 2012 and agreeing to a similar revision to going concern value for 2013. (Transcript Vol I at 180)
17. Although Respondent's appraiser identified six sales of hotels during the period March 2006 to November 2012, Respondent's appraiser did not prepare a sales comparison approach to determine the true cash value of the subject property because there was a "lack of availability of reliable market data." (Respondent's appraisal, p. 32). Respondent's appraiser concluded that using these sales to calculate an average sale price per room provided a "benchmark" for the income approach.
18. Respondent's appraiser relied solely on the income approach (direct capitalization method) in determining the true cash value of the subject property, concluding that this approach "is the only reliable and applicable valuation tool in estimating the Subject's fee simple interest." (Respondent's appraisal, p. 73)
19. In determining appropriate income and expenses for the subject property, Respondent's appraiser relied primarily on the subject's historical operation statements from 2007 – 2011, with consideration given to the 2011 edition of *Trends in Hotel Industry* published by PKF Hospitality Research.
20. In determining an appropriate capitalization rate Respondent's appraiser relied upon the "band of investment method and a market derived rate capitalization." (Respondent's appraisal, p. 50)
21. In applying the income approach to value, Respondent's appraiser determined the going concern value of the subject property to be $7,785,706 for 2012 and $7,926,961 for 2013.
22. Respondent's appraiser estimated the value of the FF&E and non-realty items to be $616,300 in 2012 and $611,072 in 2013.

23. Respondent's appraiser determined the true cash value of the subject property to be $7.15 million for 2012 and $7.3 million for 2013, relying solely upon the income approach to value.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous." *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment." *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985). "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case." *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination

of both in arriving at its determination." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported "by competent, material, and substantial evidence." *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp, supra at* 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel Corp, supra* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach. *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra at 276 n 1).*The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

<u>Cost Less Depreciation Approach</u>

The Tribunal finds that the cost approach to value is not appropriate to determine the true cash value of the subject property for the tax years at issue. Not only did the appraisers for both Petitioner and Respondent failed to prepare a cost approach to value given the difficulty in

determining accrued depreciation, but the Appraisal Institute cautions appraisers that the cost approach is less likely to yield a reliable value conclusion from an investment perspective, and is subject to difficulty in estimating physical depreciation, functional obsolescence and external obsolescence, and in determining land values. *The Appraisal of Real Estate,* Appraisal Institute 14th ed, 2013) at 566 -568.

Sales Comparison Approach

Although the sales comparison approach is often preferred by the Tribunal in determining the true cash value of a property, the Tribunal finds that this approach is not the most reliable valuation method in this case, given the difficulty both appraisers experienced in locating comparable sold properties and in making adjustments to account for differences between the comparables and the subject property. In that regard, the Tribunal finds that neither appraiser actually relied on the sales comparison approach in reconciling to their ultimate true cash value conclusions. Respondent's appraiser simply attempted to identify sales of hotels in southeast Michigan during a period from 2006 to 2012 and develop an average sale price per room to serve as a "benchmark" for comparison to the appraiser's value determination using the income approach. Because three of the six comparable sales identified by Respondent's appraiser were from 2006 and 2007, and because Respondent's appraiser made no attempt to adjust any of the comparable sales for differences between the comparables and the subject, the Tribunal gives no weight and credibility to Respondent's appraiser's market information or analysis. Further, although Petitioner's appraiser did identify five comparable sales with sale dates ranging from February 2011 to May 2013 and did attempt to make market adjustments to reflect differences between the comparables and the subject property, Petitioner's appraiser ultimately gave no weight to this approach to value in her reconciliation of values because the subject is an income producing investment property. Further, upon cross examination, Petitioner's appraiser agreed that three of the five comparables were not arms-length transactions and that errors were made in making certain adjustments. Finally, the Tribunal finds that by devoting just one page of her appraisal to a discussion and analysis of the adjustments made to the sale prices of her comparables, Petitioner's appraiser failed to credibly support and defend her ultimate conclusions of value utilizing the sales comparison approach. For these reasons, the Tribunal

gives no weight or credibility to the sales comparison approach in determining the true cash value of the subject property for the tax years at issue.

Income Approach

The Tribunal finds that given the subject's use as an income-producing suite hotel, the income approach is the most appropriate valuation method to use in determining the true cash value of the subject property for the tax years at issue. "Of the three valuation approaches available to the appraiser, the income capitalization approach generally provides the most persuasive and supportable conclusions when valuing a lodging facility." *Hotels and Motels: Valuations and Market Studies* (Chicago: Appraisal Institute, 2001) at 356.

During cross-examination, Petitioner's appraiser testified to revisions to the revenue and expense data used in her pro forma income statement. Specifically, she agreed that (i) telephone and other income received by Petitioner should be reflected in total revenue, (ii) sales tax and DMCVB should not be included as an expense since she did not take into account any revenue for room tax collected, and (iii) administrative and general expenses should be the same as what is reflected in Petitioner's actual financial statements. [Transcript Vol I at 155 – 158.] The following table shows the Petitioner's original 2012 true cash value determination using the income approach and a revised 2012 true cash value determination based solely on this testimony:

2012	**Petitioner's Original**	**Petitioner's Revised**
Room Revenue	$2,196,908	$2,196,908
Other Revenue	0	23,744[1]
Total Revenue	$2,196,908	$2,220,652
Room Expenses	$329,536	$ 153,892[2]
Telephone Expenses	21,969	21,969
Total Departmental Expenses	$351,505	$ 175,861
Management & Franchise	$252,644	$ 252,644

[1]Other revenue includes telephone revenues and other miscellaneous income.
[2]Room expenses are reduced for sales tax and DMCVB fees that were collected by Petitioner but not included in income by Petitioner's appraiser.

Admin/General	659,072	621,904[3]
Marketing	43,938	43,938
Operation & Maintenance	93,369	93,369
Energy	175,753	175,753
Total Undistributed Operating Expenses	$1,224,776	$1,187,608
Personal Property Taxes	$10,985	$5,319[4]
Insurance	32,954	32,954
Reserves	98,861	98,861
Total Fixed Charges	$142,800	$137,134
Net Operating Income	$477,827	$720,049
Capitalization Rate	0.1359	0.1359
Estimated Market Value	$3,515,139	$5,298,374[5]
Less: FF&E	$353,000	$353,000
Final Opinion of Market Value	$3,162,139	$4,945,374

Petitioner's appraiser further testified that similar calculations would then need to be made to the 2013 pro forma income statement. (Transcript Vol I at 180) These calculations were performed by the Tribunal based on evidence presented by both parties, resulting in the following adjusted Final Opinion of Market Value proposed by Petitioner:

2013	**Petitioner's Original**	**Petitioner's Revised**
Room Revenue	$2,444,209	$2,444,209
Other Revenue	0	12,947[6]
Total Revenue	$2,444,209	$2,457,156
Room Expenses	$366,631	$168,747[2]
Telephone Expenses	24,442	24,442

[3]Actual expense incurred by Petitioner.
[4]Actual expense incurred by Petitioner.
[5]Although Respondent's appraiser agreed to a revision of the true cash value for 2012 of $5,251,325 at the hearing, that value was based on estimated and rounded expense values proposed by Respondent's counsel. The Tribunal has determined actual income and expenses associated with the categories identified by Petitioner's appraiser in which errors were made.
[6]Other revenue includes telephone income.

Total Departmental Expenses	$391,073	$193,189
Management & Franchise	281,084	281,084
Admin/General	733,263	733,013
Marketing	48,884	48,884
Operation & Maintenance	103,879	103,879
Energy	195,537	195,537
Total Undistributed Operating Expenses	$1,362,647	$1,362,397
Personal Property Taxes	$12,221	$8,965
Insurance	36,663	36,663
Reserves	109,989	109,989
Total Fixed Charges	$158,873	$155,617
Net Operating Income	$531,615	$745,593
Capitalization Rate	0.1335	0.1335
Estimated Market Value	$3,981,119	$5,587,663
Less: FF&E	353,000	353,000
Final Opinion of Market Value	$3,628,119	$5,234,663

Even after application of these revisions agreed to by Petitioner's appraiser, there remain significant differences between the income approaches to value performed by each appraiser and the final value conclusion reached for each tax year under appeal. A comparison of each party's determination of the TCV of the subject property for the tax years at issue using the income approach is as follows:

2012	**Respondent**	**Petitioner's Revised**
Room Revenue	$2,286,432	$2,196,908
Other Revenue	22,864	23,744
Total Revenue	$2,309,296	$2,220,652
Room Expenses	$565,778	$153,892
Telephone Expenses	19,629	21,969
Total Departmental Expenses	$585,407	$175,861

Management & Franchise	$127,011	$252,644
Admin/General	157,732	621,904
Marketing	70,406	43,938
Operation & Maintenance	198,963	93,369
Energy/Utility	184,428	175,753
Total Undistributed Operating Expenses	$738,540	$1,187,608
Personal Property Taxes	$0	$5,319
Insurance	19,629	32,954
Reserves	28,866	98,861
Total Fixed Charges	$48,495	$137,134
Net Operating Income	$936,854	$720,049
Capitalization Rate	0.12033	0.1359
Estimated Market Value	$7,785,706	$5,298,374
Less: FF&E	616,300	353,000
Final Opinion of Market Value	$7,169,406	$4,945,374

2013	**Respondent**	**Petitioner's Revised**
Room Revenue	$2,604,218	$2,444,209
Other Revenue	26,042	12,947
Total Revenue	$2,630,260	$2,457,156
Room Expenses	$657,565	$168,747
Telephone Expenses	19,727	24,442
Total Departmental Expenses	$677,292	$193,189
Management & Franchise	$131,513	$281,084
Admin/General	210,421	733,013
Marketing	124,937	48,884
Operation & Maintenance	249,875	103,879
Energy/Utility	223,572	195,537
Total Undistributed Operating Expenses	$940,318	$1,362,397

Personal Property Taxes	$0	$8,965
Insurance	22,357	$36,663
Reserves	39,454	109,989
Total Fixed Charges	$61,811	$155,617
Net Operating Income	$950,839	$745,593
Capitalization Rate	0.11995	0.1335
Estimated Market Value	$7,926,961	$5,587,663
Less: FF&E	611,072	353,000
Final Opinion of Market Value	$7,315,889	$5,234,663

Given the differences between the parties' respective income approaches, the Tribunal has analyzed each item of revenue and expense to determine the appropriate Net Operating Income of the subject property for the 2012 and 2013 tax years. Similarly, the Tribunal has analyzed the capitalization rates determined by each appraiser as well as the value of the FF&E and other intangible property that should be deducted from the derived going concern value.

<u>Revenue</u>

Room Revenue

Room revenues derived by the respective appraisers were generally consistent, with Respondent's appraiser determining slightly higher room revenues than did Petitioner's appraiser. Petitioner's appraisal states these figures ". . . represent the subject property's true performance levels which are basically in line with its sub-market according to the STR report." [P-4 at 59.] Petitioner's expert testified that she ". . . made a conscious decision that given that the subject property is performing better than its direct competitors as identified by STR, that . . . the existing ADR and occupancy rate for the subject indicates that it is a stable property . . ." and she based the revenue used in the income approach on the actual revenue of the subject. [Transcript Vol I at 43.]

For the 2012 tax year, Respondent's appraiser determined room revenue based on five years (2007 – 2011) of stabilized income data from the subject property, as well as on PKF data broken down by all properties, rate group, property size, and geographic location; and five

selected "sub-market" comparables (with STR data from 2009 – 2012). Respondent's appraiser further concluded that the PKF data established that revenues were increasing at a rate equal to or higher than expenses in 2011 and that ". . . a prospective buyer/investor would expect a reasonable increase in revenues for the 1st year of operation over the previous year." [R-3 at 38.] He further stated that based on the subject's operating history and the PKF and STR data that revenue was increasing over the last three years. [Transcript Vol II at 229.] Based on the percentage change in revenues from the data sources identified, Respondent's expert concluded to a 3.5% increase in number of rooms sold for the 2012 tax year. Respondent's expert utilized a similar approach for the 2013 tax year, this time looking at stabilized income for the subject from 2007 – 2012, PKF data for 2012, and sub-market data from 2009 – 2012, increasing the number of rooms sold for the 2013 tax year by 2.5%.

The Tribunal finds that Respondent's appraiser provided both the historical data relied on for the subject property and the data from the PKF reports and the sub-market comparables. After reviewing this information and analysis, the Tribunal finds that Respondent's appraisers' use of multiple sources, especially the stabilized revenue of the subject over a five-year period, is a more persuasive indicator of room revenues for the 2012 and 2013 tax years than the actual revenue for each year utilized by Petitioner's appraiser. Therefore, the Tribunal finds that Respondent's appraiser's estimated room revenues of $2,286,432 for 2012 and $2,604,218 for 2013, are appropriate.

Telephone Revenue

Petitioner's appraiser failed to include actual telephone revenue or other revenue realized by Petitioner in her income approach. She testified that the telephone revenue the subject received was not a "material amount" and it was not included in her analysis. [Transcript Vol I at 45 – 46.] She testified on cross-examination that this telephone and other revenue should be included; the actual amount of telephone and other revenue received by Petitioner for the 2012 tax year to be added to the pro forma was $23,744, based on the financial information included in the appraisal. [Transcript Vol I at 133, 145; P-2 at 7.]

Petitioner's appraiser did not testify regarding the specific amount to be used or calculations to be made in revising her 2013 analysis to include other revenue. Petitioner's financial statements reflect telephone revenue of $12,946.84 in 2012 and miscellaneous revenue

of $110,325.03. [P-2 at 16.] Because neither party provided any explanation or analysis of miscellaneous revenue, the Tribunal does not find it appropriate to include this actual amount for miscellaneous revenue in any of the income calculations for the 2013 tax year.

Respondent's appraiser included an amount for other revenue of $22,864 for 2012, which was identified as telecommunications and other income, which he testified probably consisted of cable TV, pay-per-view, and vending machines. [Transcript Vol II at 230.] Respondent's appraisal provides that the telephone and other income used in the income approach were based on the subject's historical data of 1% - 2% of total income, with 1% being used in the analysis. [R-3 at 39.] For the 2013 tax year, 1% of total income was also used, for a total telephone and other revenue amount of $26,042. [R-3 at 58.]

Similar to its findings with respect to room revenue, the Tribunal finds that Respondent's approach, which considers the subject's stabilized telephone and other revenue over a five-year period, is more reliable than Petitioner's appraiser's revised other income, given her failure to include such revenue in the pro forma income statements included in her appraisal.

<u>Expenses</u>

Petitioner's appraiser stated "[t]he expense figures that [she] utilized are partly based on what the client provided [her] and partly based on [her] analysis of several other financials that [she has] done over the years to try to stabilize the subject." [Transcript Vol I at 54.] Petitioner's appraisal states "[t]he expense level applied in the pro forma utilizes an average of these [actual] expenses [for 2012 and 2013.]" [P-4 at 60.] Petitioner's appraiser further testified that she relied on the financial statements provided by Petitioner and attempted to stabilize them over the two-year period as a percentage of the total revenue. [Transcript Vol I at 57.] However, the Tribunal finds that although Petitioner's appraisal states that the expenses used were an average of the two-year period for the 2012 and 2013 tax years, the expenses ultimately included by Petitioner's appraiser do not reflect an average of the expenses listed on Petitioner's financial statements for year-end 2011 and 2012. Further, the percentages applied to each category for

each tax year do not correspond to the average of the percentages attributable to the actual expense for 2011 and 2012.[7]

Respondent's appraiser reviewed both the subject's actual expenses over a five-year period and PKF data and concluded that the subject is performing within the same general range as the market and is a stabilized property. [Transcript Vol II at 234.] He explained that the percentages applied for the various expense categories were stabilized as to the subject itself and with PKF. Except for the franchise fee, Respondent's expert applied a 3.25% growth factor to the undistributed operating expenses[8] for the 2012 tax year, which the Tribunal finds to be reasonable based on the information provided. For 2013, Respondent's appraiser estimated these expenses as a percentage of total revenue based on financial information from the prior three years.

As stated more fully below, and with few exceptions or modifications, the Tribunal finds that the approach utilized by Respondent's appraiser in determining expense applicable to the subject property is better supported and more credible than the expense analysis provided by Petitioner's appraiser.

Room Expenses

Petitioner's financial statements do not provide a breakdown of room expenses. The actual room expense for the subject, as indicated in Petitioner's appraisal, was $326,343 for 2012 and $379,934 for 2013. [P-4 at 60.] Petitioner's appraiser applied a room expense in her pro forma of $329,536 for 2012 and $366,631 for 2013, or 15% of total room revenue. As discussed above, upon cross-examination, Petitioner's appraiser reduced those expenses by an amount attributable to sales and room taxes not included in income.

Respondent's appraiser analyzed Petitioner's financial statements and determined that items attributable to room expense ranged from 21.4% to 26% over the five-year period, with an average of 23.8%. Respondent's appraiser concluded to a stabilized rate of 24.5% for 2012 and 25% for 2013 (based on a three-year period ranging from 23.9% to 24%).

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[7]For example, the actual energy (utilities) expense in 2011 was $164,749.55, and in 2012 it was $193,771.35. The average over the two-year period is therefore $179,260.45. The pro forma uses an expense of $175,753 for 2012 and $195,537 for 2013, neither of which represents the average of the utility expenses. The percentage of total revenue for energy (utilities) used in the pro forma was 8%. The actual utility expense in 2011 was 6.93% and in 2012 it was 7.18%. The average of these percentages for the two-year period is 7.055%.

[8]Undistributed operating expenses, other than the franchise fee, are admin/general, marketing, POM, and utilities.

As with the revenue items, the Tribunal finds Respondent's appraiser's use of stabilized expenses, based on the subject and PKF data, are more reliable than the arbitrary percentage of room revenue method used by Petitioner's appraiser. However, because Respondent's appraiser applied his stabilized rate to total revenues rather than room revenues, the Tribunal has adjusted said expenses to $560,175 for 2012 and $651,054 for 2013.

Telephone Expenses

The actual telephone expense reflected on Petitioner's financial statements was 19,552 for 2012 and $24,270 for 2013. Petitioner's appraiser determined that the telephone expense in the pro forma should be 1% of room revenue ($21,969 for 2012 and $24,442 for 2013), but failed to provide any explanation regarding her determination that a 1% expense adjustment was appropriate.

Respondent's appraiser found that the subject had telephone expenses over the five-year period of 0.7% to 0.9% of revenue, selecting 0.85% for 2012 and 0.75% for 2013. The Tribunal finds that no support has been provided by Petitioner's appraiser for the 1% of revenue calculation and that the percentages used by Respondent's appraiser are within the range of the actual expense experienced by the subject during the five-year period examined. Thus, the Tribunal finds that telephone expenses of $19,629 for 2012 and $19,727 for 2013 are appropriate.

Management and Franchise

Petitioner's financial statements do not reflect any separate management expense. Petitioner's appraiser stated that she was not aware of any relationship between Petitioner and a specific management company, but ". . . there is a management fee which is very typical for these property types . . ." and further indicated that the management fee would have been part of the administrative general fee. [Transcript Vol I at 36 – 37, 63.] Petitioner's financial statements reflect franchise fees of $251,202 in 2012 and $406,512 in 2013, but Petitioner's appraiser's pro forma did ". . . not show such a dramatic increase in that number" and she stabilized at 11.5% of revenue. [Transcript Vol I at 48.] Petitioner's appraiser failed to provide any explanation regarding why the 11.5% was selected to reflect the franchise fee in her income approach.

Respondent's appraiser did not include any amount for management fees in the income approach, although the PKF national data in Respondent's appraisal does reflect a 3.5% management reserve. He stated that the potential expenses for management fees should be considered, but he ultimately concluded that because the subject property has a general manager on site and ". . . there's no management fee just to own the property." [Transcript Vol II at 317 – 318.] Respondent's expert further explained that Petitioner cannot pay itself twice for having an on-site manager and the management fee is included in the payroll expense.

Although the actual 2012 financial statement for the subject reflected a franchise fee of $251,202, Respondent's appraiser determined that a portion of that amount actually represented marketing, admin/general, and franchise fee, according to PKF. Based on the PKF estimates, Respondent's appraiser allocated ¼ of the amount on the financial statement to admin/general, ¼ to marketing, and the remaining ½ to the franchise fee. [Transcript Vol II at 314 – 315.] Respondent's appraiser included an expense for franchise fee at 5.5% of revenue for 2012 and 5% for 2013, with the appraisal indicating that Petitioner's franchise fee has ranged from 5.3% to 5.6% over the five-year period.

The Tribunal finds that Petitioner's appraiser has failed to support her assumption that the franchise fee would be 11.5% of total revenue. While the appraiser states that this expense was stabilized, Petitioner's appraiser relied only on data from the 2011 and 2012 tax years, with the actual franchise fee during 2012 reflecting a "dramatic increase" from the 2011 actual expense. The 2011 expense for franchise fee was 10.57% of revenue and the 2012 expense was 15.07%. The mere fact that the 11.5% selected falls between these two values is not sufficient to support the use of this percentage for the tax years under appeal.

With regard to the management fee, the Tribunal finds that the actual financial statements for the subject do not reflect any amount for management fees. Petitioner's appraiser indicated that the management fee would have been part of the admin/general fee. This statement is in-line with the testimony of Respondent's expert that the subject property has an on-site manager, and any fee for management would be included as part of the payroll expense. Accordingly, the Tribunal finds that it would be inappropriate to include a management fee as a separate expense, as any such fee has already been accounted for in the stabilized admin/general expenses.

The Tribunal further finds that, as with several other expense items, the financial statements did not provide a breakdown into the various categories necessary for the pro forma. Respondent's appraiser relied on PKF and actual franchise fees for the subject over a five-year period, and determined that the amount on the financial statement for franchise fee should be separated into three components, with ½ being allocated to the actual franchise fee in the pro forma. Based on this determination, the range in actual expense over the five-year period was 5.3% to 5.6% of revenues and the 5.5% selected by Respondent's appraiser for the 2012 tax year is consistent with actual expenses. However, the 5% selected for 2013 is slightly below the actual expense of the subject over the five-year period. Respondent's expert did not explain why a lower percentage was selected for 2013. Further, the lower percentage is not in line with the statement made in the appraisal for this expense for both 2012 and 2013 that the 5.3% to 5.6% was ". . . a highly stable and consistent range." The Tribunal finds that there is nothing in the financial statements, evidence, or testimony that would support a finding that the franchise fee expense has declined in 2013. Accordingly, the Tribunal finds that this expense should be 5.5%, which is within the range of values experienced by the subject over the five-year period analyzed.

Admin/General

Petitioner's financial statements do not contain an itemization for this expense. According to Petitioner's appraisal, the actual admin/general expenses for 2012 were $621,904 and $733,013 for 2013. Petitioner's appraiser determined admin/general expenses to be 30% of room revenue ($659,072 for 2012 and $733,263 for 2013). When questioned during cross examination as to the increase in the pro forma for 2012 from what was reflected on the financial statements, Petitioner's expert stated "honestly, I can't tell you what was in my head. I can tell you that I was working with percentages." [Transcript Vol I at 154 – 155.]

Respondent's appraiser stated that admin/general expenses ranged from 6.1% to 7.7% of revenues over the five-year period. Assuming a 3.25% growth rate, Respondent's appraiser concluded that admin and general expenses equal to 6.8% of revenues for 2012 was appropriate. For 2013, Respondent's appraiser applied a stabilized expense of 8%, based on Petitioner's actual expense in 2012 of 7.8% of revenue.

The Tribunal finds that Petitioner's appraiser failed to use stabilized admin/general expenses for the subject and has further failed to support the "percentages" she was working with to arrive at her adjusted values. There is neither an explanation in the appraisal nor testimony that would reliably establish the basis for the values used. The Tribunal further finds that Petitioner's actual expense over a five-year period ranged from 6.1% to 7.7% of revenue. Although the PKF data reflects that this expense ranged from 9.6% to 10.7%, Respondent's appraiser stabilized this expense based on an average actual value per room of 6.8%, excluding 2009 because of unique depressed market conditions experienced. For the 2013 tax year, however, Respondent's appraiser applied a stabilized rate of 8% based on actual expense for 2012. The appraisal indicates that "[t]his expense is expected to increase to some degree as occupancy increases." [R-3 at 66.] The PKF data used for this tax year shows this expense ranging from 9.1% to 10.5%, with the average being 9.9%, and the geographic area being 10.5%. The actual expense of the subject has been below the range reflected by PKF, and therefore, utilizing the PKF data solely for this expense would not be supported. The actual occupancy rate of the subject was 63.1% in 2011 and 72% in 2012, which supports a determination that the expenses would increase for the 2013 tax year, given the increase in occupancy for the subject. As such, the Tribunal finds that the 8% admin/general expense applied by Respondent's appraiser for 2013 is supported. Thus, the Tribunal finds that admin/general expenses of $157,732 and $210,421 for 2012 and 2013, respectively, are appropriate.

Marketing

Petitioner's appraiser testified that she slightly increased the marketing expense reflected by Petitioner ". . . given that the Petitioner is an owner of several hotels and he may have access to bulk purchasing powers that others may not have . . . ." [Transcript Vol I at 48.] This increase was based on her ". . . analysis of several financials over the last 20 years." *Id.* The actual marketing expenses, based on the year-end 2011 financial statement, were $17,717 (advertising and promotion/entertainment); Petitioner's appraiser used a marketing expense of $43,938 for the 2012 tax year. For the 2013 tax year, the financial statement reflects actual marketing expenses of $18,661 (advertising) and Petitioner's expert used $48,884.

Respondent's appraisal states that the marketing expense typically ". . . includes national marketing fees and franchise royalty fees, along with the Subject's own sales and local

marketing program." [R-3 at 46; 66.] As previously stated, Respondent's appraiser further testified that 1/4 of the franchise fee would be allocated to marketing based on PKF information. Respondent's appraisal indicates that the marketing expense for the subject has been 2.9% to 3.6% over the five-year period used for the 2012 tax year, with an average of 3.2%. For 2012, Respondent's appraiser applied a 3.25% growth rate to a stabilized average value, or 3% of total revenue. For 2013, Respondent's appraiser stated that the actual expense from 2012 had increased to 4.6%, mostly due to the increase in the subject's franchise fee. Respondent's appraiser utilized a rate of 4.5% of total revenue for 2013.

As with several other expense items, the Tribunal finds that Petitioner's appraiser failed to credibly support her basis for the value selected. The difference between the actual expense and the amount applied by Petitioner's expert is more than just a "slight increase"; the expenses used in the pro forma are 2.5 to 3.5 times more than the actual expenses experienced by Petitioner. There was no data or testimony that would support a determination that such a large increase was appropriate. The Tribunal finds that the approach utilized by Respondent's appraiser, based on the five-year stabilized expense of the subject and a 3.25% growth rate is supported. Thus, the Tribunal finds that for 2012 the rate applied for marketing expenses should be the 3.2% average over five years, increased by the 3.25% growth rate, or 3.3%. Respondent's appraiser did not, however, explain why a stabilized value was not selected for the 2013 tax year. Instead, Respondent's appraiser selected 4.5%, which is essentially the same as the actual 4.6% of total revenue experienced by the subject in 2012, even though this was an increase largely attributable to the increased franchise fee experienced by the subject during 2012. The increase in marketing expense based on the larger franchise fee is inconsistent with Respondent's appraiser's treatment for the franchise fee expense itself, which he actually decreased to 5% for 2013 from the 5.5% used for 2012. Historically, the subject has experienced marketing expenses ranging from 2.9% to 3.6%. The Tribunal finds that the stabilized expense history of the subject is more reliable than the increase experienced for this expense during 2012. Accordingly, the Tribunal finds that the marketing expense should be determined at the same 3.3% used for the 2012 tax year.

Property Operation and Maintenance (POM)

Petitioner's appraiser estimated POM expense to be 4.25% of revenues for 2012 and 2013, which equates to $93,369 and $103,879, respectively. The actual expenses for the subject, as indicated by Petitioner, were $92,199 for 2012 and $124,206 for 2013. Petitioner's appraiser did not provide an explanation or analysis as to why the 4.5% was selected or what expenses from the financial statement were included in this category in the pro forma. The Tribunal does not find the values used by Petitioner's appraiser to be reliable or supported.

Respondent's appraisal states that the actual expenses attributable to POM for 2012 were $204,496 and for 2013 they were $262,399, and that "[t]his category typical[ly] covers interior and exterior maintenance and repair, landscaping, snow removal and common area maintenance." [R-3 at 47, 67.] The actual expenses for the subject have ranged from 6.9% to 9.5% over the five-year period, with the average being 8.4%. Respondent's appraiser determined a stabilized amount for 2012 POM to be 8.6% of total revenue, which includes a 3.25% growth rate. For 2013, Respondent's appraiser indicated that the expense "increased measurably" in both 2011 and 2012 over the previous years. [R-3 at 67.] Because the actual expense of the subject in 2011 was 9.2% and in 2012 it was 10%, Respondent's appraiser used a stabilized value of 9.5%. Based on Respondent's appraiser's information and analysis, the Tribunal finds that a stabilized rate of 9.5% is supported for both the 2012 and 2013 tax years.

Energy/Utility

Petitioner's appraiser determined an energy/utility expense of 8% of revenue for each tax year at issue. Petitioner's appraiser did not explain why this percentage was selected; however, for 2012, Respondent's appraiser also used 8%, based on a stabilized value increased by a 3.25% growth rate. For 2013, Respondent's appraiser used 9.5% of total revenue, indicating that this expense fluctuates with energy prices and actual occupancy. The actual expense had ranged from 4.5% to 11.5% over the five-year period, with the actual expense in 2012 being 9.1%. Given that the actual occupancy of the subject did increase from 2011 to 2012, and that Respondent's appraiser indicated that the occupancy would be projected to increase in 2013, a stabilized rate of 9.5% is supportable and is within the range of the historical expense realized by the subject. Thus, the Tribunal finds that energy expenses of $184,744 and $249,875 are appropriate for 2012 and 2013, respectively.

Personal Property Taxes

Petitioner's appraiser testified that the actual $5,319 in personal property taxes reflected on Petitioner's financial statements for year-end 2011 should be used, not the $10,985 included in her pro forma. [Transcript Vol I at 154.] For year-end 2012, the actual personal property taxes on Petitioner's financial statement were $8,965. Respondent's appraiser did not include any amount for personal property taxes. *The Dictionary of Real Estate Appraisal* (Appraisal Institute 5th ed, 2010), at 146 defines personal property as "[i]identifiable tangible objects that are considered by the general public as being 'personal' – for example, furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all tangible property that is not classified as real estate." The Tribunal finds that it is not appropriate to deduct personal property taxes as an expense when the furniture, fixtures, and equipment are not valued as parts of the real property and both parties have deducted a value for the FF&E under the income approach.

Insurance

Actual insurance expenses on Petitioner's 2011 financial statement were $15,917, and for 2012 insurance expenses were $30,477. Petitioner's appraiser used insurance expenses of $32,954 for 2012 and $36,663 for 2013, stating that the insurance expense reflected by Petitioner was also increased for the same reasons and on the same basis as the increase for the marketing expense. [Transcript Vol I at 153 – 154.] As previously stated, Petitioner's appraiser provided no support for this increase in insurance expense over actual expenses.

Respondent's appraiser indicated that except for the first year of operation in 2007, the insurance expense for the subject has been fairly consistent, ranging from 0.7% to 0.9% over a four-year period. For 2012, Respondent's appraiser used a rate of 0.85% of revenue to determine insurance expense. Respondent's appraiser noted that the insurance expense spiked in 2012 but premiums are not always consistent from year to year. Respondent's appraiser again utilized a rate of 0.85% for the 2013 tax year. This expense for both 2012 and 2013 is supported by the range experienced by the subject from 2008 – 2011. Thus, the Tribunal finds that insurance expenses of $19,629 and $22,357 are appropriate for 2012 and 2013, respectively.

Reserves

A "reserve" is defined as "[a]n appropriation from surplus funds that is allocated to deferred or anticipated contingencies." *The Dictionary of Real Estate Appraisal* (Appraisal Institute 5th ed, 2010), at 169. A "reserve for replacement" or "replacement allowance" is defined as "[a]n allowance that provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced during the building's economic life." *Id* at 168.

Petitioner's financial statements do not reflect any money set aside as a reserve. Petitioner's appraiser stated that the reserve rate from RealtyRates for this property type ranged from 4% to 8%, with an average of 4.5%, which is what was used in her pro forma and was included to account for anticipated major expenses, which would include the roof, heating/cooling, and the bridge and retaining wall.

Respondent's appraiser utilized a reserve of 1.25% for 2012 and 1.5% for 2013, with the appraisal stating that reserves were not accounted for in the subject's financial statements or in PKF and that "[t]he Subject is a fairly new project and considered to be in very good condition. Although the Subject will likely require continual maintenance, most of this will be accounted for in the POM charges . . . . Any reserve account should be relatively modest." [R-3 at 48, 68.] Respondent's appraisal does not indicate how the 1.25% and 1.5% were derived.

The Tribunal finds that neither the subject's financial statements nor the PKF data showed an amount for reserves. While Respondent's appraiser used 1.25% and 1.5%, there was no evidence or explanation as to why these specific amounts were selected. The only evidence relative to reserves was offered by Petitioner's appraiser, who selected 4.5% for each tax year based on the national RealtyRates data she analyzed. Even though the subject property is newer construction, the Tribunal finds that some type of allocation for reserves is necessary, especially given the fact that Petitioner may be required to make repairs for the retaining wall and bridge present on the property. Although the RealtyRates data is based on the overall national limited service hotel market, for this expense, it is the most reliable evidence presented. Accordingly, the Tribunal finds that a reserve rate of 4.5% of total revenue for 2012 and 2013 is appropriate, resulting in reserves of $103,819 for 2012 and $118,362 for 2013.

Capitalization Rate

Petitioner's appraiser used a capitalization rate of 10.81% for 2012 and 10.57% for 2013, based solely on information derived from RealtyRates, which is stated in the appraisal to be based on "the overall national hospitality limited service market." [P-4 at 63.] Petitioner's appraiser stated that she ". . . studied national cap rates and local interest rates to develop a band-of-investment and develop a cap rate" and this was used as a check for reasonableness. [Transcript Vol I at 21, 141.] The band-of-investment method reflected capitalization rates of 10.6% for 2012 and 10.43% for 2013. [P-4 at 63.] Petitioner's appraiser acknowledged that generally, investment grade properties like the subject have a lower capitalization rate than non-investment grade properties, but the RealtyRates data she used included both investment and non-investment grade properties. [Transcript Vol I at 143 – 144.] She indicated that RealtyRates is a reputable source and it is an acceptable appraisal practice to use it. [Transcript Vol I at 147.] After adding the effective tax rate, the final capitalization rates used by Petitioner's expert were 13.59% for 2012 and 13.35% for 2013.

Respondent's appraiser used the band-of-investment method to derive a capitalization rate. The factors used in his band-of-investment were based on his experience and his knowledge of the interest rates banks were providing for various properties in the Michigan market. [Transcript Vol II at 241.] Using the band-of-investment method, the capitalization rate for 2012 was 9.36%. Respondent's appraiser also used a market extraction method based on sales of seven suite hotels from August 2006 to November 2010, which had capitalization rates ranging from 6.67% to 9.01%, with the average being 7.71%. The appraisal indicates that most of these rates are from somewhat better submarkets. Respondent's appraiser testified that the band-of-investment indicated an overall rate that he rounded down to 9.25%, which was a little higher than the overall rates seen in the market, but he took into consideration that three of the market rates came from Ann Arbor, which is a larger and more stabilized market. [Transcript Vol II at 242 – 245.] Respondent's appraiser used the same 9.25% cap rate for 2013. After adjusting for property taxes, the final capitalization rates used by Respondent's appraiser were 12.033% for 2012 and 11.995% for 2013. The Tribunal finds that Respondent's appraiser has provided better support and analysis in developing an appropriate capitalization rate to be applied to the net income generated by the subject property for 2012 and 2013. The Tribunal

further finds that a capitalization rate of 9.25% plus the applicable tax rate is appropriate for the tax years at issue.

Furniture, Fixtures, and Equipment

Furniture, Fixtures, and Equipment (FF&E) is defined as "[t]angible personal property plus trade fixtures and leasehold improvements." *The Dictionary of Real Estate Appraisal* at 249.

Petitioner's appraiser testified that she "developed a cost per room for each room to which [she] added office furniture, lobby furniture, the pool, and additional equipment. She then depreciated it at 5 percent to come up with $353,000." [Transcript Vol I at 79.] The estimated cost per room was testified to be from her experience with financials for other similar properties and what Petitioner spends on average to furnish rooms. *Id*. The 5% depreciation rate applied by Petitioner's appraiser was also based on conversations with Petitioner regarding its opinion of the depreciated value of the FF&E. [Transcript Vol I at 81.] In addition, Petitioner's appraiser testified during cross-examination that the FF&E values were partly based on Marshall & Swift costs for these items. [Transcript Vol I at 100 – 101.]

Respondent's expert was not provided an itemized inventory list, but the 2011 financial statement from Petitioner reflected $486,300 for FF&E, to which an estimate of $5,000 was added to cover inventories (dishes, linens, etc.) not included in FF&E. [R-3 at 52.] Respondent's expert further estimated an amount of $125,000 to be allocated to the non-realty franchise fee, for a total FF&E of $616,300. For 2013, the FF&E from the financial statements was $476,072, to which Respondent's appraiser added $5,000 for inventories and $130,000 for the franchise fee, for a total of $611,072. Respondent's appraiser did not subtract any amount for depreciation of the FF&E, and indicated that he would rather take too much off for FF&E without the depreciation than depreciating the FF&E by too much and ending up with a higher going concern for the subject. [Transcript Vol II at 249.] The Tribunal finds that Respondent's appraiser's determination of the value for FF&E and business assets to be adjusted from the going concern value of the subject property for the tax years at issue are supported by the evidence and testimony provided by Respondent's appraiser.

Applying the Tribunal's analysis with respect to the applicable revenue, expense, capitalization rate and FF&E deduction results in the following income approach calculations for the 2012 and 2013 tax years:

Tribunal TCV Determination	**2012**	**2013**
Room Revenue	$2,286,432	$2,604,218
Other Revenue	22,864	26,042
Total Revenue	$2,309,296	$2,630,260
Room Expenses	$560,175	$651,054
Telephone Expenses	19,629	19,727
Total Departmental Expenses	$579,804	$670,781
Management & Franchise	$127,011	$144,644
Admin/General	157,732	210,421
Marketing	76,206	86,798
Operation & Maintenance	219,383	249,875
Energy/Utility	184,744	249,875
Total Undistributed Operating Expenses	$765,076	$941,613
Personal Property Taxes	$0	$0
Insurance	19,629	22,357
Reserves	103,918	118,362
Total Fixed Charges	$123,547	$140,719
Net Operating Income	$840,869	$877,147
Capitalization Rate	12.033%	11.995%
Estimated Market Value	$6,988,024	$7,312,605
Less: FF&E	616,300	611,072
Final Opinion of Market Value	$6,371,724	$6,701,533

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that subject property is assessed in excess of 50% of true cash value, and that the most reliable indicator of value for the 2012 and 2013 tax years at issue was the income approach, as

calculated by the Tribunal. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

Steven H. Lasher

Entered: June 4, 2014
klm